Chong Fui Shipping & Forwarding Sdn Bhd v Steel Industries (Sabah) Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO S-02(IM)-2517–11 OF 2013
ZAHARAH IBRAHIM, MOHAMAD ARIFF YUSOF AND VARGHESE GEORGE JJCA
5 AUGUST 2016

Shipping and Navigation — Bill of lading — Hague Rules — Respondent engaged appellant to transport steel bars from Penang to Kota Kinabalu — Upon arrival steel bars corroded — Respondent commenced action against appellant for lost suffered — Appellant raised preliminary issue that respondent's action barred by limitation pursuant to para 6 article III of the Hague Rules — High Court dismissed application — Whether limitation period in bill of lading inapplicable in contrary with s 29 of the Contracts Act 1950 — Whether decision of Court of Appeal in COSCO Container Lines Co Ltd & Anor v Terengganu Forest Products Sdn Bhd and another appeal binding upon court — Contracts Act 1950 s 29 — Hague Rules para 6 article III — Rules of Court 2012 O 33 rr 3 & 5

The respondent had purchased 2000 metric tonnes of steel bars from a company in Penang and engaged the appellant to transport the steel bars to Kota Kinabalu. However, upon arrival in Kota Kinabalu, it was discovered that the steel bars had corroded. The respondent sued the appellant and the insurer for the sum of RM710,157. The appellant raised a preliminary issue pursuant to O 33 rr 2 and 5 of the Rules of Court 2012. The sole preliminary issue was whether the respondent's suit was barred by limitation under para 6 article III of the Hague Rules. The learned trial judge was of the view that the limitation period of one year applied based on the High Court case of *Terengganu Forest Products Sdn Bhd v COSCO Container Lines & Anor* [2007] 5 MLJ 486 ('Terengganu Forest Products'), nevertheless, the learned trial judge held that he was bound by the decision of the Court of Appeal which reversed the decision of the High Court in striking out the plaintiff's suit in *Terengganu Forest Products* case and thus, dismissed the appellant's application, hence this appeal. The issues for determination were: (a) whether the limitation period in the bill of lading as provided for in the Hague Rules was inapplicable for being in contrary to s 29 of the Contracts Act 1950 ('the CA'); and (b) whether the decision of the Court of Appeal in reversing the interlocutory decision of the High Court in *Terengganu Forest Products* case and ordering the case to proceed to full trial was binding upon the below court.

Held, allowing the appeal with costs of RM20,000 here and below; and setting aside the order of the High Court:

(1) The term limiting the period within which action may be commenced in cases of loss of damage arising from carriage of goods by the appellant in this case was contained in the bill of lading. However, that term was not inserted in the bill of lading by the agreement of the parties but due to the provisions of regs 2 and 4 of the Sarawak Regulations made applicable in Sabah by the Sabah Regulations. In the circumstances, the term in the bill of lading limiting the period within which action may be taken by the respondent was not contrary to s 29 of the CA and was therefore a valid term (see paras 31–32).

(2) The Hague Rules are meant for contracts of carriage. The Court of Appeal's decision in the *Terengganu Forest Products*' case overturning the striking out order by the High Court and ordering the matter to go for trial without providing any grounds for such decision was purely due to the nature of the plaintiff's cause of action which was the tort of deceit. The Court of Appeal would surely have provided grounds for their decision if the basis for that decision was that the period of limitation under the Hague Rules was not applicable in respect of a claim for loss or damage to goods in a carriage by sea contract. Thus, the Court of Appeal decision did not bind the below court or this court (see paras 47–50).

[Bahasa Malaysia summary

Responden telah membeli 2000 tan metriks batang keluli daripada syarikat di Pulau Pinang dan mendapatkan khidmat perayu untuk membawa batang keluli tersebut ke Kota Kinabalu. Walau bagaimanapun, apabila tiba di Kota Kinabalu, ia didapati bahawa batang keluli telah kakis. Responden menyaman perayu dan syarikat insurans bagi jumlah sebanyak RM710,157. Perayu membangkitkan isu permulaan berikutan A 33 k 2 dan 5 Kaedah-Kaedah Mahkamah 2012. Satu-satunya isu permulaan adalah sama ada tindakan responden dihalang oleh had masa di bawah perenggan 6 artikel lll Hague Rules. Hakim perbicaraan yang bijaksana berpendapat bahawa tempoh had masa satu tahun digunapakai berdasarkan kes Mahkamah Tinggi *Terengganu Forest Products Sdn Bhd v COSCO Container Lines & Anor* [2007] 5 MLJ 486 ('Terengganu Forest Products'), walau bagaimanapun, hakim perbicaraan yang bijaksana memutuskan yang beliau terikat dengan keputusan Mahkamah Rayuan yang mengakas keputusan Mahkamah Tinggi dalam membatalkan tindakan plaintif dalam kes *Terengganu Forest Products* dan oleh itu, menolak permohona perayu, maka rayuan ini. Isu untuk penentuan adalah: (a) sama ada tempoh had masa dalam bil muatan seperti yang diperuntukkan di dalam Hague Rules tidak boleh diguna pakai kerana bertentangan kepada s 29 Akta Kontrak 1950 ('AK'); dan (b) sama ada keputusan Mahkamah Rayuan dalam mengakas keputusan interlokutori Mahkamah Tinggi dalam kes *Terengganu Forest Products* dan memerintahkan kes diteruskan kepada perbicaraan penuh adalah mengikat ke atas Mahkamah Tinggi.

Diputuskan, membenarkan rayuan dengan kos sebanyak RM20,000 di mahkamah ini dan Mahkamah Tinggi; dan mengetepikan perintah Mahkamah Tinggi:

(1) Terma mengehadkan tempoh dalam mana tindakan mungkin boleh dimulakan dalam kes-kes kerugian yang berbangkit daripada pengangkutan barangan oleh perayu dalam kes ini terdapat di dalam bil muatan. Walau bagaimanapun, terma tersebut tidak dimasukkan dalam bil muatan oleh perjanjian pihak-pihak tetapi akibat peruntukan peraturan-peraturan 2 dan 4 Peraturan-Peraturan Sarawak yang boleh dipakai di Sabah oleh Peraturan-Peraturan Sabah. Dalam keadaan ini, terma di dalam bil muatan mengehadkan tempoh dalam mana tindakan mungkin boleh diambil oleh responden tidak bertentangan kepada s 29 AK dan oleh itu adalah terma sah (lihat perenggan 31–32).

(2) Hague Rules adalah bermaksud kontrak pengangkutan. Keputusan Mahkamah Rayuan dalam kes *Terengganu Forest Products*' menolak perintah pembatalan oleh Mahkamah Tinggi dan memerintahkan perkara untuk dibicarakan tanpa memperuntukkan apa-apa alasan bagi keputusan sedemikian hanya semata-mata akibat sifat kausa tindakan plaintif yang mana adalah tort penipuan. Mahkamah Rayuan semestinya memperuntukkan alasan-alasan bagi keputusan mereka jika asas keputusan tersebut adalah bahawa tempoh had masa di bawah Hague Rules tidak terpakai berkaitan tuntutan untuk kerugian atau ganti rugi kepada barangan dalam pengangkutan oleh kontrak laut. Oleh itu, keputusan Mahkamah Rayuan tidak mengikat Mahkamah Tinggi atau mahkamah ini (lihat perenggan 47–50).]

Notes

For a case on Hague Rules, see 11(1) *Mallal's Digest* (5th Ed, 2015) para 1292.

Cases referred to

Aries Tanker Corporation v Total Transport Ltd [1977] 1 All ER 398, HL (refd)

Cosco Container Lines Co Ltd & Anor v Trengganu Forest Products Sdn Bhd and another appeal [2011] 1 MLJ 617; [2011] 4 CLJ 473, CA (refd)

New Zealand Insurance Co Ltd v Ong Choon Lin (t/a Syarikat Federal Motor Trading) [1992] 1 MLJ 185; [1992] 1 CLJ Rep 230, SC (refd)

PDZ Lines Sdn Bhd v Master Agencies (M) Sdn Bhd [2012] 5 CLJ 880, HC (refd)

Trengganu Forest Products Sdn Bhd v Cosco Container Lines & Anor [2007] 5 MLJ 486; [2007] 5 CLJ 720, HC (not folld)

Trengganu Forest Products Sdn Bhd v Cosco Container Lines Company Ltd & Anor [2009] 7 MLJ 781; [2009] 7 CLJ 573, HC (refd)

Legislation referred to

Carriage of Goods by Sea Act 1950
Contracts Act 1950 s 29
Dangerous Drugs Act 1952 s 16
Merchant Shipping Ordinance 1960 (No 11/1960) ss 277, 278
Merchant Shipping Ordinance 1960 (Ord 2/1960) s 277
Merchant Shipping (Applied Subsidiary Legislation) Regulations 1961
Merchant Shipping (Implementation of Conventions Relating to Carriage of Goods by Sea and to Liability of Shipowners and Others) Regulations 1960 regs 2, 4
Rules of Court 2012 O 33, O 33 rr 2, 5
Rules of the High Court 1980 O 18 r 19(1)

Appeal from: Suit No BKI-22–83/5 of 2012 (High Court, Kota Kinabalu)

Lawrence SH Thien (Chau & Thien) for the appellant.
Norbert Yapp (Norbert Yapp & Assoc) for the respondent.

Zaharah Ibrahim JCA (delivering judgment of the court):

INTRODUCTION

[1] This was an appeal against the decision of the High Court at Kota Kinabalu which dismissed the application by the appellant ('the first defendant') for determination of a preliminary issue under O 33 of the Rules of Court 2012 ('the ROC 2012').

[2] The parties are referred to in this judgment as they were in the High Court.

BRIEF BACKGROUND FACTS

[3] The brief background facts of this case are as set out in the judgment of learned High Court judge and which are substantially reproduced below.

[4] The plaintiff was a steel manufacturer based in Sabah, while the first defendant was the owner of a vessel called 'Builder's Success'.

[5] The plaintiff purchased 2000 metric tonnes of steel bars from a company in Penang and engaged the first defendant to transport the steel bars to Kota Kinabalu. The second defendant was the insurer.

[6] Upon arrival in Kota Kinabalu, it was discovered that the steel bars had corroded.

[7] The plaintiff sued both the first and second defendants jointly and severally for the sum of RM710,157.

IN THE HIGH COURT

[8] In the High Court, the first defendant applied (encl 49) for a preliminary issue to be determined under O 33 r 2, para 3(2) and r 5 of the Rules of Court 2012.

[9] The sole preliminary issue was whether the plaintiff's suit was barred by limitation of time under para 6 article III of the Hague Rules. That paragraph provides that a suit for loss or damage must be brought within one year after delivery of the goods or the date when the goods should have been delivered.

[10] It was common ground that the plaintiff commenced this suit one year and one month after the goods were received by the plaintiff.

[11] The learned High Court judge, after referring to several cases, in particular the case of *Aries Tanker Corporation v Total Transport Ltd* [1977] 1 All ER 398 and the High Court cases of *Trengganu Forest Products Sdn Bhd v Cosco Container Lines & Anor* [2007] 5 MLJ 486; [2007] 5 CLJ 720 ('Terengganu Forest Products (1) case') and *PDZ Lines Sdn Bhd v Master Agencies (M) Sdn Bhd* [2012] 5 CLJ 880, was of the view that the limitation period of one year in the Hague Rules applied.

[12] However, the learned trial judge held that he was bound by the Court of Appeal decision which reversed the decision of the High Court striking out the plaintiff's suit in *Terengganu Forest Products (1)* case and ordered the case to proceed to trial.

[13] Based solely on the ground that he was bound by that decision of the Court of Appeal, the learned High Court judge dismissed the first defendant's application.

[14] The first defendant appealed to this court against that decision.

APPEAL

Submissions

[15] Learned counsel for the appellant submitted before us that the limitation period in the Hague Rules as adopted by way of regulations made under s 278 of the Sabah Merchant Shipping Ordinance 1960 applied to the present case.

[16] Learned counsel for the respondent however submitted that the Hague Rules had been adopted by way of subsidiary legislation and therefore could not prevail over the provision of s 29 of the Contracts Act 1950.

ISSUES

[17] In our view, two issues needed to be addressed by this court:

(a) whether the limitation period in the bill of lading as provided for in the Hague Rules was inapplicable for being contrary to s 29 of the Contracts Act 1950 (Issue (1)); and

(b) whether the decision of the Court of Appeal reversing the interlocutory decision of the High Court in *Terengganu Forest Products (1)* case and ordering the case to proceed to full trial was binding upon the High Court in the case on appeal before us (Issue (2)).

ANALYSIS

Issue (1): Applicability of the limitation period under the Hague Rules

Application of the Hague Rules in Sabah

[18] The rules commonly referred to as the 'Hague Rules' are the provisions of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading concluded at Brussels on 25 August 1924 to which the United Kingdom was a signatory and a party and to which Sabah became a party through the United Kingdom. The Convention was amended by the Visby Protocol in 1968 and consequently the Hague Rules later became known as the Hague-Visby Rules. The rules applicable in the context of the appeal before us were the Hague Rules as those were the rules made applicable to Sabah in 1961.

[19] The Hague Rules were applied to Sarawak under s 277 of the Merchant Shipping Ordinance of Sarawak, by way of the Merchant Shipping (Implementation of Conventions Relating to Carriage of Goods by Sea and to Liability of Shipowners and Others) Regulations 1960 ('the Sarawak Regulations').

[20] Using the power conferred on the Governor in Council under ss 277 and 278 of the Merchant Shipping Ordinance 1960 of North Borneo, the Governor in Council made the Merchant Shipping (Applied Subsidiary Legislation) Regulations 1961 ('the Sabah Regulations'), applying, among others, the Sarawak Regulations in North Borneo with effect from 1 April 1961. The relevant parts of ss 277 and 278 read as follows:

277(1) The Governor in Council may make regulations generally for carrying this Ordinance into effect, and, in particular, such regulations may provide for —

...;

(e) subject to the prior approval of the Secretary of State, the implementation, in whole or in part, of any international convention relating to Merchant Shipping or to any matter incidental thereto or connected therewith;

(2) ...

278 Application of subsidiary legislation.

Where the Governor in Council is empowered to make any subsidiary legislation under any of the provisions of this Ordinance such subsidiary legislation may be made by applying, *mutatis mutandis,* any subsidiary legislation made from time to time under the Merchant Shipping Acts or under the Merchant Shipping Ordinance, 1960 of the Colony of Sarawak.

[21] The adoption into domestic law of international conventions, treaties or other obligations is done by various ways, most commonly by reproducing wholly or partially the actual relevant provisions of the convention/treaty or other agreements in a domestic law enacted specifically for the purpose of such adoption, or by enacting statutes which give effect to the provisions of the convention/treaty or other agreements, or a hybrid of the two.

[22] The usual legislative vehicle for such adoption is an Act or Ordinance passed by the Legislature. However, there is no impediment to a Legislature empowering a delegate to do so by way of subsidiary legislation. For example, under the Single Convention on Narcotic Drugs 1961 to which Malaysia is a party, the manufacture of narcotic drugs must be regulated. Section 16 of the Dangerous Drugs Act 1952 empowers the Minister to make regulations for that purpose.

[23] In Peninsular Malaysia, the Hague Rules were made part of domestic law through the Carriage of Goods by Sea Act 1950. The Legislature of Sabah however, chose the route of regulations made by the Governor in Council.

[24] Regulation 2 of the Sarawak Regulations as applied *mutatis mutandis* in Sabah provides:

2 Subject to the provisions of this Part, the Rules set out in the Schedule (hereinafter referred to as 'the Rules') shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in *Sabah* to any other port whether within or outside *Sabah. ['Sabah' substituted for 'Sarawak']*.

[25] Regulation 4 of the Sarawak Regulations as applied *mutatis mutandis* in

Sabah provides as follows:

> 4 Every bill of lading or similar document of title issued in *Sabah* which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the provisions of the Rules as applied to this Part. *['Sabah' substitutedfor 'Sarawak']*.

[26] Paragraph 6 of article III of the Hague Rules (as applied by the Sarawak Regulations and made applicable to Sabah by the Sabah Regulations) provides as follows:

> 6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.
>
> The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.
>
> *In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.*
>
> In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods. (Emphasis added.)

[27] The plaintiff's contention was that the provision in para 6 on limitation of time to bring an action was contrary to s 29 of the Contracts Act 1950. It relied on the judgment of the Supreme Court in *New Zealand Insurance Co Ltd v Ong Choon Lin (t/a Syarikat Federal Motor Trading)* [1992] 1 MLJ 185; [1992] 1 CLJ Rep 230.

[28] Section 29 of the Contracts Act 1950 reads as follows:

> 29 Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

[29] We agree with the learned High Court judge that s 29 of the Contracts Act 1950 applies only in relation to the terms of an agreement limiting the time for a party to enforce his rights as formulated by the parties themselves (as was the case in *New Zealand Insurance Co Ltd v Ong Choon Lin (t/a Syarikat Federal Motor Trading)*) without being, in the words of His Lordship, 'assisted by any statutory provision'.

[30] In *New Zealand Insurance Co Ltd v Ong Choon Lin (t/a Syarikat Federal Motor Trading)* the matter in dispute was condition 19 of a fire policy issued by the appellant which disallowed the respondent from bringing an action after 12 months from the happening of the loss or damage. Condition 19 was a term imposed by the appellant, not a term required by statute to be inserted into the policy.

[31] The term limiting the period within which action may be commenced in cases of loss of damage arising from carriage of goods by the first defendant in this case was contained in the bill of lading. However, that term was not inserted in the bill of lading by the agreement of the parties as is usually the case in other contracts. That term was in the bill of lading due to the provisions of regs 2 and 4 of the Sarawak Regulations made applicable in Sabah by the Sabah Regulations. In other words, that term was a term mandated by statute, and not by agreement of the parties to the contract.

[32] In the circumstances of this case therefore, it was our considered view that the term in the bill of lading limiting the period within which action may be taken by the plaintiff was not contrary to s 29 and was therefore a valid term.

Issue (2): Court of Appeal's decisions in the Trengganu Forest Products (1) case

Terengganu Forest Products (1)'s case

[33] We believe it would be useful to briefly describe the *Trengganu Forest Products (1)* case.

[34] That case involved a contract of carriage of a cargo of 56 containers of plywood. The plaintiff was the shipper and the defendant was the carrier. Relying on the bill of lading (that represented the cargo as having been shipped on board the vessel on 30 April 1994), the plaintiff submitted documents, including the bill of lading, to the negotiating bank for payment pursuant to the letter of credit.

[35] The cargo was in fact not loaded on board the vessel on 30 April 1994. It was also not discharged at the designated port (Xingang Port) but was discharged at Hong Kong and subsequently transhipped to Xingang on another vessel.

[36] The matter between the plaintiff and the buyer went to arbitration and the plaintiff was ordered to pay compensation to the buyer. The plaintiff then sued the defendant for the tort of deceit claiming that there was fraudulent misrepresentation in the bill of lading.

[37] The defendant then applied under O 18 r 19(1) of the Rules of the High Court 1980 to have the plaintiff's writ of summons and statement of claim struck out on the ground that the claim was barred by limitation under the Hague Rules as made applicable in Peninsular Malaysia by the Carriage of Goods by Sea Act 1950. The plaintiff resisted that application and submitted that the limitation period under the Hague Rules did not apply to that case as its action was based on tort, not contract, and the limitation period in the Hague Rules only applied to contractual liabilities.

[38] The High Court allowed the defendant's application, holding that the words 'all liability' in para 6 of article III of the Hague Rules were wide enough to cover even claims such as those made by the plaintiff.

[39] The defendant appealed against that decision. The Court of Appeal allowed that appeal and ordered the case to proceed to trial. *The Court of Appeal did not provide any written judgment*.

[40] The case proceeded to trial. At the conclusion of the full trial, judgment was entered for the plaintiff. The judgment after full trial was reported as *Trengganu Forest Products Sdn Bhd v Cosco Container Lines Company Ltd & Anor* [2009] 7 MLJ 781; [2009] 7 CLJ 573. On the issue of limitation, the High Court held that as the defendant did not appeal against the Court of Appeal's decision in the striking out matter, the defendant could not raise the issue of limitation again as the matter had been decided upon.

[41] The defendant appealed to the Court of Appeal against the decision after full trial.

[42] The Court of Appeal in their judgment (*Cosco Container Lines Co Ltd & Anor v Trengganu Forest Products Sdn Bhd and another appeal* [2011] 1 MLJ 617; [2011] 4 CLJ 473) held as follows (at p 624 (MLJ); p 480 (CLJ)) in relation to the issue of limitation:

> [9] On the facts of the case which is now on appeal before us, we have come to an inescapable conclusion that the issue of estoppel based on limitation has been raised and argued before three forums, ie, the senior assistant registrar, the judge-in-chambers and finally the Court of Appeal. The finality is that, since there was no further appeal the issue of limitation had been determined in the respondent's favour. On that basis, the appellants fail on the first ground.

Binding effect of the *Terengganu Forest Products (1)*'s case

[43] Based on this decision of the Court of Appeal the learned High Court judge in the case before us came to the conclusion that the issue of the

applicability of the limitation period under the Hague Rules had been finally determined by the Court of Appeal and he was bound by it. Was His Lordship correct in so concluding? A

[44] As we have mentioned earlier, in the *Terengganu Forest Products (1)*'s case the Court of Appeal, in allowing the plaintiff's appeal against the High Court decision to have the suit struck out due to limitation, did not provide any grounds for that decision. We have no way of knowing the reasons for that decision. We do not know if the Court of Appeal in making that decision did so because it found that the limitation period in the Hague Rules did not apply or whether further arguments were required. B C

[45] However, we noted that the plaintiff's claim in the *Trengganu Forest Products (1)*'s case was based on *tort*. This was made clear in the judgment of the learned High Court judge after full trial. It was based on 'the tort of deceit by virtue of the fraudulent misrepresentation made by the defendant in the bill of lading'. D

[46] Unlike the case before us, in the *Trengganu Forest Products (1)*'s case the plaintiff did not claim for the loss of the goods or damage to the goods in the course of their being carried by the carrier (the defendant). The goods in the *Trengganu Forest Products (1)*'s case arrived intact at the designated port of discharge, albeit via another port. The plaintiff's efforts to have the goods returned to it failed. The loss/damage claimed by the plaintiff was the total value of the goods as well as the compensation it had to pay to the buyer pursuant to the arbitral award. E F

[47] The Hague Rules are meant for *contracts* of carriage, as evidenced by a bill of lading or other similar documents. The provision for limitation in para 6 of article III of the Rules is clearly in relation to loss or damage to the goods during such carriage. G

[48] In our view, the Court of Appeal's decision in the *Trengganu Forest Products (1)*'s case overturning the striking out order by the High Court and ordering the matter to go for trial was purely due to the nature of the plaintiff's cause of action: the tort of deceit. H

[49] We believed that the Court of Appeal, when it reversed the striking out order of the High Court (and remitted the case for full trial), would surely have provided grounds for their decision *if* the basis for that decision was that the period of limitation under the Hague Rules was not applicable in respect of a claim for loss or damage to goods in a carriage by sea contract. I

[50] We were therefore of the considered view that the Court of Appeal

decisions in the *Trengganu Forest Products (1)*'s case *did not* bind the High Court (or us) in the case before us.

DECISION

[51] Based on our analysis of the issues as set out above, we allowed the appeal with costs, and set aside the order of the High Court.

[52] Consequently, paras (a) and (b) of the first defendant's application (encl 49), dated 7 June 2013 was allowed as prayed.

[53] We ordered costs of RM20,000 here and below to be paid to the first defendant and ordered the deposit to be refunded.

Appeal allowed with costs of RM20,000 here and below and order of High Court set aside.

Reported by Dzulqarnain Ab Fatar